

**2014 Conference of the Utah Municipal Prosecutors Association
Kim Gibb Presentation Outline**

License Sanction and Restriction Consequences

Statutes that mandate license sanctions and sanction periods can be found in 53-3-204, 53-3-211, 53-3-218, 53-3-219, 53-3-220, 53-3-221, 53-3-223, 53-3-231, 53-3-414, 53-3-418, 53-3-604, 53-3-706, 41-6a-509, 41-6a-517, 41-6a-221, 41-6a-403, 41-6a-518(4), 41-6a-904, 41-12a-303.2, 41-12a-411, 41-12a-501, 41-12a-511, 78A-6-606 and 78b-6-315.

Alcohol Ready Reference Table Update

An updated document will be shared with attendees containing information regarding license sanctions and other requirements for alcohol and drug related offenses.

IID, ARD Consequences

Q & A regarding Ignition Interlock and Alcohol restrictions imposed against drivers for alcohol and drug related offenses. The last page of the **Alcohol Ready Reference Table** contains detail regarding both IID and ARD restriction requirements.

Title 58 Violations, Motor Vehicle vs. no Motor Vehicle and Substance Abuse Treatment

If a Title 58 violation did not involve a motor vehicle and the individual is participating in or has completed substance abuse treatment, the court is not required to transmit the abstract of the conviction. In this case, the Driver License Division is not required to suspend the license. If the individual fails to comply with the substance abuse treatment requirement, the court is required to send the abstract to DLD, and DLD is required to suspend the license.

The statutory language is as follows in 53-3-218(2) (c):

(c) (i) A court is not required to forward to the division within five days an abstract of the court record of the conviction for a violation described in Subsection [53-3-220\(1\)\(c\)](#) and the Driver License Division is not required to suspend a person's license for a violation described in Subsection [53-3-220\(1\)\(c\)](#) if:

(A) the violation did not involve a motor vehicle; and

(B) the person convicted of a violation described in Subsection [53-3-220\(1\)\(c\)](#):

(I) is participating in or has successfully completed substance abuse treatment at a licensed substance abuse treatment program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section [62A-15-105](#); or

(II) is participating in or has successfully completed probation through the Department of Corrections Adult Probation and Parole in accordance with Section [77-18-1](#).

(ii) If the person convicted of a violation described in Subsection [53-3-220\(1\)\(c\)](#) fails to comply with the terms of a substance abuse treatment program under Subsection (2)(c)(i)(B)(I) or the terms of probation under Subsection (2)(c)(i)(B)(II):

(A) the substance abuse treatment program licensed by the Division of Substance Abuse and Mental Health or the Department of Corrections Adult Probation and Parole shall immediately provide an affidavit or other sworn information to the court notifying the court that the person has failed to comply with the terms of a substance abuse treatment program under Subsection (2)(c)(i)(B)(I) or the terms of probation under Subsection (2)(c)(i)(B)(II);

(B) upon receipt of an affidavit or sworn statement under Subsection (2)(c)(ii)(A), the court shall immediately forward an abstract of the court record of the conviction for a violation described in Subsection [53-3-220\(1\)\(c\)](#) to the division; and

(C) the division shall immediately suspend the person's license in accordance with Subsection [53-3-220\(1\)\(c\)](#).

Exhibition of Speed Suspension

If a driver is convicted for speed contest or exhibition on highway under **41-6a-606**, the conviction is forwarded to Driver License electronically. Once posted to the driver history, a letter is generated and sent to the driver to notify them of their license suspension. The License is suspended for 60 days from the date of conviction for a first offense, and 90 days from the date of conviction for a second or subsequent offense. A \$30.00 reinstatement fee is required once the suspension period has ended before the license may be reinstated.

Failure to Yield to Emergency Vehicle License Suspension

If a driver is convicted for failure to yield to an emergency vehicle under 41-6a-904, the conviction is forwarded to Driver License electronically. Once posted to the driver history, a letter is generated and sent to the driver to notify them of the requirement to take a 4-hour live course on defensive driving within 90 days of the conviction date. If they do not comply, a letter is sent to notify them of a 90 day driver license suspension. If the course is taken after the license has been suspended, the driver can submit evidence of completion of the course to DLD and pay a \$30 reinstatement fee to reinstate their license.

The 4-hour live course can be conducted by the Utah Safety Council, or another entity if approved by the court, but it must be live and it must be a 4-hour course to comply with the statutory requirements.

DUI vs. Impaired Driving Conviction, and Fail to Comply With Probation Terms

DLD is required to suspend or revoke under 41-6a-509 and 53-3-220 for a DUI conviction under 41-6a-502. We are not required to suspend for a reduction to impaired driving under 41-6a-502.5 unless the individual has a prior offense for impaired or reckless driving within 1 year of the offense date, or suspension is ordered by a judge under 53-3-220(1)(a)(viii) for a first offense.

If an individual is granted a reduction under 41-6a-502.5, and they fail to appear before the court and establish successful completion of the court ordered probation requirements, the court is required under 41-6a-502.5(3)(a)(iii) to enter an amended conviction under 41-6a-502. The date of entry of the amended order is the new date of conviction. In addition, DLD will not credit any time served under 53-3-223 or 53-3-231 for the same offense. The individual will serve a mandatory suspension or revocation period that is effective on the new date of conviction.

Minor Alcohol and Drug Suspensions

When a minor is “found by the court to have violated” 32B-4-409, 32B-4-410 or 76-9-701; or a court “determines that the minor committed an offense under 58-37-8 or Title 58 Chapter 37a or 37b” the court is required to order suspension of the driving privilege. The license is suspended under 53-3-219 for 1 year for a first offense or 2 years for a second or subsequent offense.

A report of a conviction does not result in the license sanction taking place. Due to the statutory language in place, the court is required to send DLD a paper court order (or complete the DI 1103 form and submit to DLD) to order suspension of the license.

The court may shorten the suspension for a first violation of 32B-4-409, 32B-4-410 or 76-9-701 if the person completes an alcohol education program ordered by the court. Effective 4-1-14, The court may now shorten the suspension for a second or subsequent violation of 32B-4-409, 32B-4-410 or 76-9-701 if the person certifies they have not consumed alcohol for a concurrent period of at least one year during the suspension period. In either case, the court will need to send an order (or a copy of the original DI1103 form with judge's note) to shorten the suspension. A \$65 reinstatement fee is required for this type of suspension. The court may not shorten a suspension for a Title 58 violation, this provision only applies to suspensions for violations under 32B-4-409, 32B-4-410 or 76-9-701.

Minor's Unlawful Use of Proof of Age Suspension

When a minor is convicted for an unlawful use of proof of age violation under 32B-4-411, the conviction is transmitted to DLD and posted on the driver history. A letter is generated to notify them of the mandatory license suspension being imposed against their driving privilege under 53-3-220(1)(e). This type of action does not require a court order to suspend. The license is suspended for 1 year for a first offense or 2 years for a second or subsequent offense. The court does not have authority to shorten this type of suspension.

Nunc Pro Tunc Pleas

Issues for DLD with nunc pro tunc pleas generally result due to the fact that we have already processed the conviction record and suspended the license effective on the original conviction date. After this has taken place, we receive a nunc pro tunc that changes the conviction date and causes us to have to send out corrected orders to back date the suspension effective date, ARD and IID restrictions, which result in three separate corrected letters having to be generated and mailed, and manual modification of the driver records to adjust the suspension and restriction periods.

If an NPT plea was worked out prior to the disposition data being sent to DLD, and we only had to process and send one set of letters and enter one set of actions and restrictions, this would be extremely helpful to us, as it would alleviate the duplication in effort involved on our end.

Most of the time when we see an NPT plea come in, it appears to be being done in an effort to manipulate the record so that the defendant doesn't have to serve the full suspension period required by statute, or in one case I saw recently, to eliminate an extension for driving during the suspension period by using a later date for the DUI conviction date so the citation they received during the suspension period is construed to be prior to the suspension date. I spoke with our legal counsel on this specific case and was advised that the original suspension effective date should be applied because we suspended upon notice of the conviction as required by statute, and the extension of the license sanction for driving during suspension should be imposed because the defendant was actually suspended at the time the citation was issued.

Another issue exists when the court allows a Nunc Pro Tunc plea for a date that is prior to the offense date. I don't believe that CORIS will allow for entry or transmittal of a date prior to the violation date as the conviction date any longer, but if for some reason we were to receive one, we would use the violation date as the conviction date, and not a date prior to the violation actually having occurred.